



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. O-8897

Re: Proper disposition to be made
by tax collector of current and
delinquent ad valorem taxes
paid under protest on the same
piece of property.

You have requested the advice of this department
in your letter of October 20th, which is as follows:

"The Tax Collector of Brewster County has
received a payment for both current and delin-
quent ad valorem taxes on the same piece of prop-
erty by a tax payer under protest, and has writ-
ten this department asking for advice as to the
proper course for him to take in disposing of the
money paid to him under protest.

"Since the protest statute providing for the
disposition of moneys paid under protest applies
to State officials, I shall thank you to advise
me the correct reply to make to the Tax Collect-
or of Brewster County in this instance."

There are only two "suspense" or protest statutes
which have been enacted by the Legislature of the State of
Texas, being Article 7057b, V.A.C.S., and Article 4388,
V.A.C.S.

Article 7057b is in part as follows:

"Sec. 1. Any person, firm or corporation
who may be required to pay to the head of any de-
partment of the State Government any occupation,

gross receipt, franchise, license or other privilege tax or fee, ..." (Emphasis ours)

Article 4388 is in part as follows:

"The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, ..." (Emphasis ours)

Article 7057b, supra, would not be applicable to the tax collector of Brewster County for two reasons: (a) he is not the head of any department of the State Government, and (b) the tax in question is an ad valorem tax and does not fall within the named classifications in the statute.

Article 4388 which describes the duty of the State Treasury in handling suspense accounts, would not be applicable for the reason that the tax collector of Brewster County, being a county officer, is not the head of a department of the State of Texas. It is true that the county tax collector is a State officer to the extent that the Legislature of the State of Texas has delegated power and authority to him in his capacity as county tax collector to collect taxes, license fees, etc., due the State of Texas from the taxpayer, and remit such taxes, fees, etc., to the respective heads of the departments after they have been collected. Hence, in the absence of any legislative authority, and there is none, the tax collector of Brewster County is without authority to keep the taxes mentioned in your letter in any suspense fund, but on the contrary, it is his duty to remit such taxes when collected by him to the proper authorities under the provisions of Articles 7260 and 7261, R.C.S., 1925.

By complying with the terms of Article 7260 and 7261, supra, the tax collector of Brewster County would incur no personal liability since this very issue was decided by the Supreme Court of Texas in the case of Continental Land and Cattle Company v. Board, Tax Collector, et al., 80 Tex. 489, 16 S.W. 312, wherein Judge Stayton held in part as follows:

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"... The rule upon this subject is thus clearly stated: 'In general, any officer whose duties are merely ministerial, and to whom process is issued which is apparently in due form of law, and which neither in its recitals nor in its omissions apprises him that it is issued without legal right, will be protected in serving it, even though in fact it was issued without authority of law. This is a rule not only essential to the protection of such officers, but absolutely required also for the due dispatch of public business. ... Appellant could not have been compelled to pay the illegal tax if he had used the means to prevent its collection which the law gave him, but, having paid it to an officer holding process which commanded him to collect it, he cannot now look to that officer for reimbursement. ..."

The doctrine above enunciated has been affirmed in the case of Texas Land and Cattle Company v. Hemphill County (Civ. App.), 61 S.W. 333, the court held in part as follows:

"... This limitation, however, and which is here urged, seems to have been expressly repudiated by the Board Case, as will be seen from the criticism therein made of the case of Hardisty v. Fleming, 57 Tex. 399; to which might be added that, after the collection, the collector is required by the law, under penalties, to make collection, and promptly report and remit all taxes collected by him to the state and county treasurers, without excepting cases in which suits, however promptly filed, may be instituted for the recovery thereof. ..."

Hence the tax collector of Brewster County may be advised that it is his duty to remit the taxes collected by him to the proper authorities under Articles 7260 and 7261, supra, and that he will not incur any personal liability by so doing.

Since the nature of the protest made by the taxpayer at the time of the payment of the taxes in question

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is not given, this opinion does not pass upon the question as to whether or not such payment was voluntary or involuntary.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

C. K. Richards

C. K. Richards
Assistant

CKR:db

APPROVED OCT 29 1945

FIRST ASSISTANT
ATTORNEY GENERAL

